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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,360	02/26/2004	Kazunari Iwaki	52013/DBP/A400	6125

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CHRISTIE, PARKER & HALE, LLP  
PO BOX 7068  
PASADENA, CA 91109-7068

EXAMINER

BELL, KENT L

ART UNIT PAPER NUMBER

1661

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/789,360	Applicant(s) IWAKI ET AL.	
	Examiner Kent L. Bell	Art Unit 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- application filed 2/26/04*
- 1) ☒ Responsive to ~~communication(s) filed on~~ 2/26/04.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/~~are~~ pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/~~are~~ withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/~~are~~ allowed.
- 6) ☒ Claim(s) 1 is/~~are~~ rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/~~are~~ objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/19/04 is/~~are~~: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/26/04 + 7/19/04</u> | 6) <input type="checkbox"/> Other: _____  |

*K. L. Bell*

**Detailed Action**

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

### **Detailed Action**

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, lines 13 and 14, and page 2, line 26, Applicants are requested to set forth in the specification whether the parental cultivars, 'Red Madness' and '70-200', and cultivars 'Sunripami' and 'Sunrovein', have been patented in the United States, is currently the subject of a pending U.S. Plant Patent application, or unpatented. If patented, --(U.S. Plant Patent No.)-- should be inserted after the cultivar name. If the subject of a pending application, such should be referred to by serial number. If unpatented, --(unpatented)-- should be inserted after the appropriate cultivar name.

**Detailed Action**

B. Page 1, lines 23-26, Rather than stating "Pat." it appears the recitation --Patent-- would be more appropriate in these instances.

C. Page 2, lines 4 and 5, Applicants state "The seed of 'Red Madness' was bought from Ball Seed corporation.". The recitation "Ball Seed corporation" should be deleted as it constitutes unwarranted advertising (MPEP 1610).

D. Page 2, line 9, Applicants state "at Omi R&D Center, Suntory Flowres Ltd.". This recitation should be deleted as it constitutes unwarranted advertising (MPEP 1610).

E. Page 2, lines 16, 23, and 24, Applicants state "at the Omi R&D Center, Suntory Flowers Ltd.". These recitations should be deleted as they constitute unwarranted advertising (MPEP 1610).

F. Page 2, lines 29 and 30, Applicants state the instant plant's characteristics are uniform and stable. However, this does not mean the instant plant reproduces true to type in successive generations of asexual reproduction. If accurate, applicants should state in the specification --The instant plant reproduces true to type in successive generations of asexual reproduction.--.

**Detailed Action**

G. Page 3, line 30, and page 5, line 27, Applicants state “petal chip”. This recitation is not understood as it is unclear what applicants intend “petal chip” to mean. Correction and/or clarification is necessary.

H. Page 4, lines 32-34, Applicants should set forth in the specification the age of the plants when described and location of culture.

I. Page 5, lines 7-12, Applicants should set forth in the specification additional information relative to the instant plant’s stem including the typical and observed stem length.

J. Page 5, lines 13-22, Applicants should set forth in the specification additional information relative to the instant plant’s leaf including the typical and observed leaf margin descriptor.

K. Applicants should set forth in the specification information relative to the instant plant’s petioles including the typical and observed petiole length, diameter, and coloration with reference to the employed color chart.

**Detailed Action**

L. Applicants should set forth in the specification information relative to the instant plant's buds including the typical and observed bud shape, length, diameter, and coloration with reference to the employed color chart.

M. Page 5, lines 23-34, Applicants should set forth in the specification information relative to the instant plant's petals including the typical and observed petal shape, length, width, and apex and margin descriptor.

N. Page 5, line 30, Applicants should set forth in the specification additional information relative to the instant plant's flower including the typical and observed flower depth.

O. Page 5, line 32, Applicants set forth a bottom color for the corolla throat. Applicants should set forth an upper color for the corolla throat with reference to the employed color chart.

P. Page 6, lines 2 and 3, Applicants should set forth in the specification additional information relative to the instant plant's peduncle including the typical and observed coloration with reference to the employed color chart.

**Detailed Action**

Q. Page 6, line 4, Applicants should delete “in” as the recitation set forth without this term is sufficient.

R. Page 6, line 4, Applicants should set forth in the specification additional information relative to the instant plant’s sepals including the typical and observed sepal shape, length, width, apex, base, and margin descriptors, and coloration (both surfaces) with reference to the employed color chart.

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

**Claim Rejection**

**35 U.S.C. 112, 1st & 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

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**Detailed Action**

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached at (571) 272-0811.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL  
PRIMARY EXAMINER**

*Kent L. Bell*